IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5499 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTIBHAI M RANA & ANR.

Versus

STATE OF GUJARAT

Appearance:

MS VINITA S. VINAYAK for MR DM THAKKAR for Petitioner

MR SP HASURKAR with MS DARSHNA PANDIA, AGP

for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 01/09/2000

ORAL JUDGEMENT

The petitioners working as Head Constable and Constable respectively, have challenged the action of the respondent seeking to dismiss them from services on account of their conviction in Criminal Case No. 97 of 1989 for the offences under Sections 376, read with Sec. 354 etc. of the IPC.

2. The petitioners were convicted by the Additional Sessions Judge, Court No.4, Ahmedabad, on 22.6.1991 for the offences under Section 376, read with Section 354,

341, 342, 323 and Section 34 of the Indian Penal Code and sentenced to ten years rigorous imprisonment and fine.

3. The grievance of the petitioners is that though Criminal Appeal No. 464 of 1991 against their conviction is pending before the High Court after it was admitted on 16.7.1991, the concerned authorities have dismissed them by orders made in August, 1991. The orders of dismissal were brought to the notice of the Court by annexing them to Civil Application No. 706 of 1993, in which a direction was sought for paying subsistence allowance to the petitioners during the pendency of the Criminal Appeal.

4. The contention that since the Criminal Appeal is pending no order of dismissal could have been made, will not now survive in view of the decision of a Full Bench of this Court in P.D. Waghela Vs. G.C. Raiger, reported in 35(1) G.L.R 240, in which the Full Bench opined that the conviction referred to in Clause (a) of the Second Proviso to Article 311 (2) of the Constitution to form a basis for the dismissal, removal or reduction in rank, could be one recorded by a competent Criminal Court in the first instance and the preferring of an appeal or revision against such conviction and the pendency of the same will not alter the position and action taken on the basis of such conviction, did not conform to Clause (2) of Art. 311, since upon expressed terms of the Second Proviso thereto, Clause (2) of Article 311 is dispensed with.

5. Similar contention to those which have been canvassed on behalf of the petitioners by their learned Counsel were raised before this Court in Special Civil Application No. 1912 of 2000 and it was contended that a hearing was necessary before imposing a punishment, even if a person was convicted on a criminal charge. The Court relying on its earlier decision and considering the decision of the Supreme Court in Union of India Vs. Tulsiram Patel, reported in AIR 1985 (S.C) 1416, held that the delinquent had no right to have an opportunity of making a representation or of hearing on the penalty proposed to be imposed in such case. The earlier decision in Rambadan R. Shukla & anr. Vs. District Superintendent of Police & anr. reported in 38 (1) G.L.R 352 was confirmed by the Division Bench in LPA No. 5 of 1997 on 4th May, 1998.

6. In this view of the matter, the petitioners have no valid ground for challenging the orders of their dismissal on the ground that the Criminal Appeal

preferred by them against their conviction and sentence is pending or on the ground that any hearing was necessary before imposing the punishment of dismissal on them, even after their conviction on a serious criminal charge of having committed rape and other offences for which they have been sentenced to rigorous imprisonment of ten years. There is therefore, no substance in this petition and it is rejected. Rule is discharged with no order as to costs.

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*/Mohandas